



United States Department of the Interior



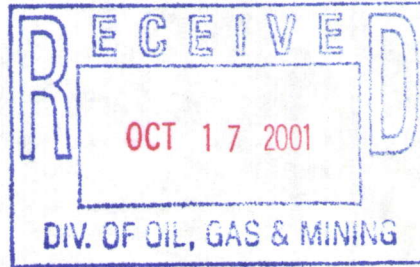
Bureau of Land Management

Richfield Field Office

150 East 900 North

Richfield, Utah 84701

<http://www.ut.blm.gov>



IN REPLY REFER TO:

3809

(U-050)

UTU-71573

October 12, 2001

Certified Mail 7000 0600 0025 7432 2864
Return Receipt Requested

DECISION

Mr. Tony Aguiar
Diversified Stone Products, Inc.
P. O. Box 1181
Fillmore, Utah 84631

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: Surface Management Notice
: UTU-71573
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:

Requirement to Post Signs, Ensure Safe Travel, and Properly Backfill

As you are aware, you have a notice and amendments, filed as updates, for mining-related operations at a project area in T. 26 S., R. 4 W., section 23, SE $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$, SLM. The original notice was filed in 1994 for quarrying operations involving the Wonder 2 mining claim (UMC 356268), and the Bureau of Land Management (BLM) case file for your notice is UTU-71573.

A member of my staff, Michael Jackson, and yourself have discussed your operation through on-site inspections, correspondence, and phone calls. In addition, Michael has mapped your site and discussed the operations with other knowledgeable staff at BLM, the Utah Division of Oil, Gas, and Mining (UDOGM), and Mine Safety and Health Administration (MSHA). In this letter, the inspections, correspondence and phone calls will be briefly reviewed; the regulations will be summarized; and a decision will be rendered about certain aspects of your operations.

On June 14, 2000, your project area was inspected by BLM and UDOGM, and you were present for part of that inspection. During this inspection, BLM noted that the portion of the highwall at the southeast end of the quarry, that had been overhanging in the previous year, had been reduced and eliminated. During the inspection, you stated that in the coming year, you would deepen part of the quarry and that you would backfill part of the quarry.

On July 17, 2000, a letter was sent to you from this office requesting you to delineate the area to be mined (deepened), to depict the area to be backfilled, to describe the proposed height and angle of the highwall, to describe measures to stabilize the highwall and ensure public safety, to address the location

and size of dumps and stockpiles, and to identify the size of the material in the dumps and stockpiles.

On June 18, 2001, a certified letter was received in this office from you, and you stated that: "There would be no significant changes in our ongoing operations during the 2001-2002 year. Our procedures will remain the same throughout the upcoming year and we will be operating under the stipulations in our existing Notice of Operations."

On July 16, 2001, BLM responded with a certified letter to you. In that letter, you were asked to address the areas to be mined, the height and angle of any highwall, the areas to be backfilled, the material that would be used for backfill, the proposed height and slope angle of the backfill, and the equipment to be used, if different than that described under your original notice.

On July 18, 2001, your project area was inspected by BLM, and the site was mapped with GeoExplorer3c, a mapping instrument that uses the Global Positioning System (GPS). The site includes a highwall, a mining bench or platform below the highwall, and piles of loose, broken, rock material. Toward the north end of the highwall, the face is up to 35 feet in height with a steep slope. Toward the south end, the highwall is lower in overall height with a face that has overhanging rock material.

On August 23, 2001, Michael Jackson met with you at the subject site. At that time, Michael understood that: you would not be quarrying in-place stone, you would re-work the loose rock material in the dumps, and you would use reject material from that operation as backfill to reduce the height and slope of the highwall. The safety concern with respect to the highwall was discussed, and you agreed to post warning signs. You also stated that you would like to erect a barrier by placing boulders across the access road into the quarry. Michael discussed with you that a barrier and posting signs would require an approval as an occupancy under the Federal regulations at 43 CFR 3715, and he understood that you would address your proposed operations and the occupancy in a follow-up letter from yourself to the BLM. In addition, a safety concern that large boulders from the quarry have rolled across the access road below your quarry was discussed. You stated that you are not casting material onto the dumps, but some boulders may have been dislodged as you worked that slope to select boulders for your use. Copies of the GPS maps, produced by Michael, were given to you at this time as a record of the extent of your surface disturbance.

On August 27, 2001, Michael Jackson spoke to you by phone. Upon reconsideration of the previous inspection, he raised some concerns about backfilling against a steep highwall and about ensuring that the material is appropriately sized to accomplish that task. At one point during that conversation, you asked that BLM instruct you as to what is required for your operations, then you stated that you would send a letter to this office describing your proposed operations.

On August 28, 2001, the site was inspected by an inspector from MSHA as well as Michael Jackson. During that inspection, two groups of ATV riders, totaling 10 people, were present at the quarry. On September 5, 2001, the site was inspected by staff of UDOGM and Michael Jackson. At both of these inspections, slough material at the base of the highwall was noted as an indication of instability of the highwall face.

On September 6, 2001, a letter was received in this office as a response to the on-site meeting on August 23rd, and the subsequent phone conversation on August 27th. You stated that you will " * * * remove marketable stone from our haul pile * * *" that is " * * * six inches or larger * * *" and " * * * replace the remaining material along the northeast side of the quarry. We anticipate that this portion of our ongoing operations shall take place over the next two years."

Under federal regulations at 43 CFR 3809.3-5, Maintenance and public safety, " * * * the operator shall

maintain his structures * * * and other facilities in a safe and orderly manner. Hazardous sites or conditions resulting from operations shall be marked by signs, fenced, or otherwise identified to alert the public in accordance with applicable Federal and State laws and regulations.” The highwall at the project area is a safety hazard. In addition, if large boulders roll down the slope across the access road, that could be hazard to the public.

Under Federal regulations at 43 CFR 3809.1-3(d), all waste material “* * * produced by the operations shall be disposed of so as to prevent unnecessary or undue degradation and in accordance with applicable Federal and State Laws.” If backfill material is not adequately sized and appropriate equipment is not used, settling could create pockets or voids in the fill and could cause the fill to separate from the highwall.

At this time, BLM has reviewed the case record and the Federal regulations, and Michael Jackson has discussed your operations with you, an MSHA inspector, and mining engineers at UDOGM and BLM. BLM, to the degree practical, believes the public needs to be protected and that the backfilling should be accomplished in a manner that will prevent unnecessary or undue degradation of Federal land. The highwall presents a safety hazard at this time. Although you plan to backfill to reduce the height and slope aspect, an interim measure is needed during the two years that have been proposed for that task. In addition, although you do not plan to cast material down the slope below the quarry, a measure is needed to reduce the hazard to any ATV riders or other public, if boulders should roll down that slope during your operations.

Based on the above information, the following actions are required:

1. A clearly visible sign, apparent to any visitor, shall be posted at the entrance to the quarry and three signs shall be posted and spaced evenly along the crest of the highwall at a distance of approximately 10 feet to the east of the highwall. The signs shall contain a warning: “Danger, Active Quarry, Stay Away from Highwall.”
2. Backfilling shall be accomplished in a manner that the waste rock material, used for fill, does not separate away from the highwall and does not create pockets in the backfill upon settling.
3. If an equipment operator will be moving rock material that could roll down the slope of the rock dumps and the operator cannot see the access road below the rock dumps, then a person shall be posted on the road to warn any travelers of the hazard.

Action 1 shall be completed within 60 days of receipt of this letter. Compliance with Actions 2 and 3 shall be required as you conduct your operations on the ground.

Posting signs under Action 1 at the quarry will be considered an occupancy, and that occupancy requires that you comply with Federal regulations at 43 CFR 3715, Use and Occupancy under the Mining Laws. This letter will serve as an authorization for you to post warning signs as described. If you still want to propose a barrier at the entrance to the quarry, then you will need to apply for authorization under the 3715 regulations. A copy of those regulations are enclosed.

If your operations change from what is described in your letter, received in this office on September 6, 2001, then you should contact this office to amend your notice or to file a plan of operations, as may be appropriate under the applicable Federal regulations.

You have the right to appeal to the Utah State Director, Bureau of Land Management, in accordance with 43 CFR 3809.4. If you exercise this right, your appeal, accompanied by a statement of reasons and any arguments you wish to present which would justify reversal or modification of the decision, must be filed

in writing at this office within 30 days after the date of this decision. This decision will remain in effect during appeal unless a written request for a stay is granted.

If you wish to file a petition pursuant to 43 CFR 3809.4(b) for a stay of the effectiveness of this decision during the time that your appeal is being reviewed by the State Director, the petition for a stay must accompany your notice of appeal. A petition for a stay is required to show sufficient justification based upon the standards listed below. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.

Standards for Obtaining a Stay

Except as otherwise provided by law or other pertinent regulation, a petition for a stay of a decision pending appeal shall show sufficient justification based on the following standards:

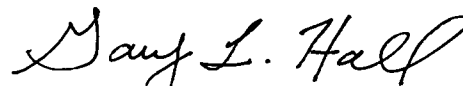
- (1) The relative harm to the parties if the stay is granted or denied.
- (2) The likelihood of the appellant's success on its merits,
- (3) The likelihood of immediate and irreparable harm if a stay is not granted, and
- (4) Whether the public interest favors granting the stay.

In your letter, you requested a copy of a mineral report prepared by Dan Netcher, who has examined another stone deposit that you state is similar to your deposit. At this time, the report is pending review. You may want to contact Mr. Netcher in the BLM office in Ely, Nevada, at (775) 289-1800.

BLM will continue to evaluate your particular stone deposit, and if necessary, complete a validity determination in order to render a decision as to whether your subject stone deposit is a common or uncommon variety mineral deposit. The criteria for that determination have been discussed with you in letters as well as during inspections. You were requested to supply any information that you have that would support your position that the stone is an uncommon variety. We believe that you as an operator and a dealer of marketable stone would have information related to the intrinsic characteristics of the stone as well as market prices and conditions.

Your efforts to maintain your operation in compliance with federal and state regulations and to provide a safe working environment for yourself and the public is appreciated. If you have any questions, please contact Michael Jackson at (435) 896-1522.

Sincerely,



Gary L. Hall
Assistant Field Manager

Enclosure: Copy of Federal Regulations, 43 CFR 3715

cc: Lynn Kunzler, Division of Oil, Gas and Mining, State of Utah, Box 145801, Salt Lake City, Utah 84114-5801